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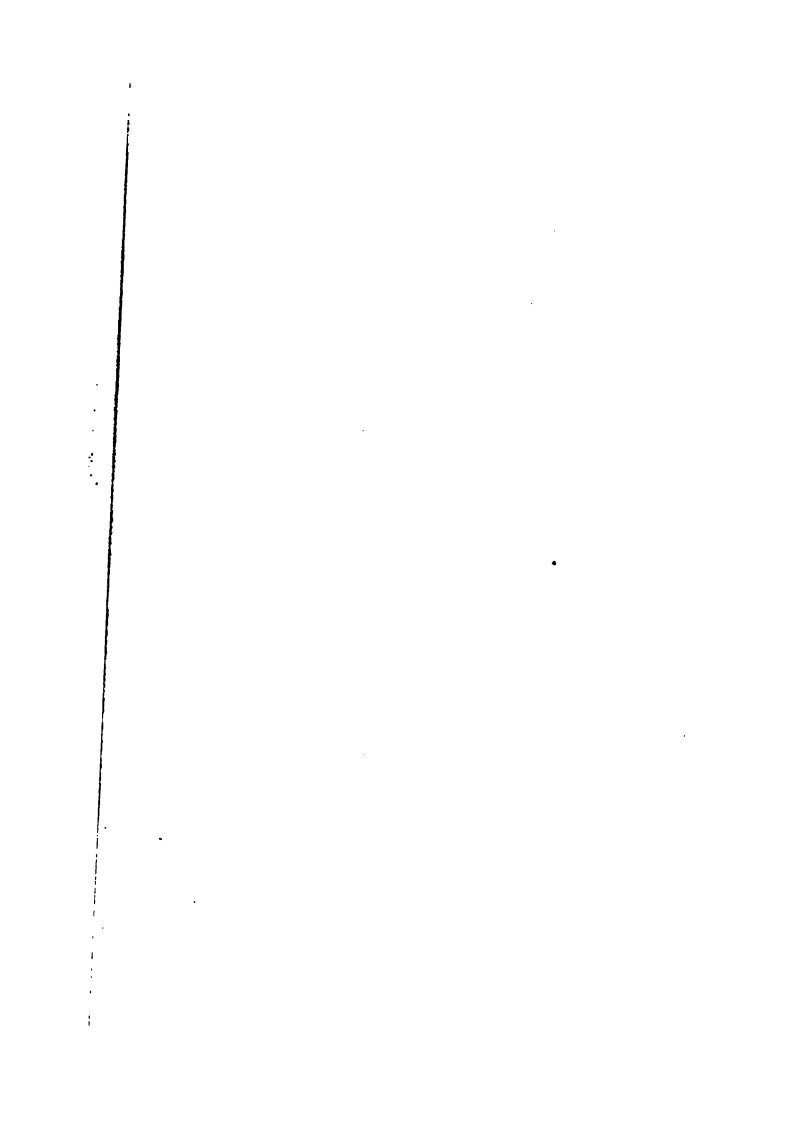
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THE DREYFUS STORY



THE DREYFUS STORY

BY
RICHARD W. HALE.
OF THE BOSTON BAR

"Report me and my cause aright
To the unsatisfied"

HAMLET, V : 2



BOSTON
SMALL, MAYNARD & COMPANY

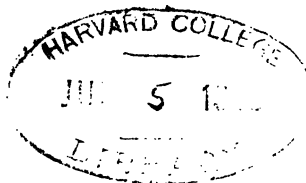
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INTRODUCTION.

There must be many who do not understand just what Dreyfus did and what was done to him, and why there has been such an excitement about the whole business. To these this little book is offered. It is not meant for the enthusiast or for the student of the case. For such the facts and discussions are in French books, which are already numerous enough to create a bibliography. I only hope here to state the general facts, so that he who runs may read.

Dreyfus was tried in secret for treason, convicted, and sentenced. To justify the conviction, when it was later doubted, the evidence was allowed to leak out, with a result opposite to that expected. The leakage helped the prisoner, and directed suspicion on Esterhazy as probably guilty of the offence of which Dreyfus had been convicted. Esterhazy was sent to a mock trial by the government, and acquitted. His trial was such a travesty of justice that Zola felt it to be a moral duty to force the issue, and wrote an open letter, addressed to President Faure, of such a character that the government was forced to prosecute him for libel. His first

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trial lasted three weeks, with much publicity and heat of passion, and went off abortively on technical points. His second and third trials were likewise abortive, and everybody expected a lull when the most important personage in the Secret Service Department first confessed that he had forged documents to clinch the case against Dreyfus, and then died of a cut throat. The story is that he committed suicide. This dramatic circumstance so far turned the scales that proceedings were begun to secure a revision of the Dreyfus conviction in the Court of Cassation. And those proceedings are now pending.

As the issues are framed, the Honor of the Army and the Safety of the Government are supposed to be staked against the rights of the individual to a full trial at all costs; and the question is which of these forces will prevail. It is complicated with tremendous race prejudice against Dreyfus as a Jew. In the pages which follow, a lawyer has tried to state with some legal accuracy, but without technical language, just what the general facts are. No one can follow the case into its ramifications without being a bore. I may omit things which seem to some important; but, if I succeed in making a statement

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which will enable the gentle reader to lay my book down and say, "I think I understand now what it is all about," I shall have done at least as much as I dare to hope.

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INTRODUCTION

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SECRET TRIAL OF DREYFUS.

Alfred Dreyfus is a native of Mulhouse in Alsace. In 1872, when Alsace and Lorraine became German, his father elected to remain a French citizen; and this election carried with it the citizenship of the minor children, including Alfred. Alfred came to Paris in 1874, received a military education, and in 1892 graduated from the "School of War" ninth in his class, and was assigned to special duty on the general staff of the army and to preliminary successive details in its separate departments designed to familiarize him with each. This much-coveted assignment is reserved for those who graduate from the "School of War" with honor. He was married, and had an income large enough to enable him to live comfortably. He is a Jew.

On Oct. 13, 1894, he received orders to present himself at the Ministry of War on the 15th in civilian clothes. He attended, and underwent severe questioning, during which he was not informed of any charges or of any evidence against him. He protested his innocence, but he is said to have shown great agitation when set to writing from dic-

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tation a letter, which showed that the charge against him was that of having communicated secret documents to an enemy. He was then arrested on a warrant dated the 14th, showing that his arrest had been previously decided upon. His house was searched for papers, his wife — but no one else — told of his arrest, and he was committed to the “Cherche-Midi” military prison. His wife was sworn to secrecy about the matter, and the first general information of the arrest leaked out in the *Libre Parole* (anti-Dreyfus) newspaper of October 29.

The preliminary investigation, the arrest, search, etc., were in charge of Commandant Du Paty de Clam. The commandant of the “Cherche-Midi” prison, Forzinetti, gives an account of matters which came under his observation, from which I make a few extracts which are typical of the conduct of the case before the trial: “I went to his cell. He was in an impossible state of over-excitement. I saw before me a man really out of his mind, with bloodshot eyes. He had overturned everything in his cell. I had the intuition that this man, this officer, was innocent. From the 18th to the 24th

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of October, Commandant Du Paty de Clam, who had arrested Dreyfus at the Ministry of War, came, provided with a special warrant from the Minister of War, to interrogate Dreyfus. Before seeing him, he inquired of me whether it were not possible to approach the cell noiselessly, carrying a light powerful enough to throw a flood of light on the captain's face, whom he desired to surprise in such a manner as to catch him off his guard (*démonter*). I answered that this was not possible. He made him undergo two examinations, and each time dictated to him fragments of phrases picked from the incriminating document, with the object of establishing the comparison between the writings." Du Paty de Clam, in his own account, says that Dreyfus was required to make specimens of his handwriting, sitting, standing, gloved, and without a glove, and with different pens in each case. Continuing the Forzinetti account: "During this time the over-excitement of Captain Dreyfus was always extreme. From the corridor one could hear him groan and cry out, speaking loudly, protesting his innocence. He dashed himself against the furniture and against the walls, appearing insensi-

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ble to the injury which he did to himself . . . After the 27th Du Paty de Clam came almost daily for fresh examinations and tests of handwriting, never with any end in view except each time to obtain the confession of guilt, against which Dreyfus never ceased protest."

The trial took place by court-martial in Paris, Dec. 20, 1894. It was secret, and practically all that the public knew of the case, except that there was a charge of treason and a conviction, was from the two half sentences which Demange, lawyer for Dreyfus, was not allowed to complete. He started to oppose a secret trial "on the ground that the only document" — and was then and there cut off by the president of the court. This seems, as French law goes, to be a fair proceeding in the discretion of the court. The president cited in his ruling "a judgment of the Court of Cassation in 1883, which decides that the need of a secret session is not to be subordinated to any interest of the accused, that it is wholly a matter of higher considerations, and that it can even be pronounced without consulting the accused." Demange, the lawyer, began to answer this. "The indictment conta

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the description of the document " — but the court peremptorily stopped him, and went into secret session. On the fourth day the doors opened; and the conviction, by an unanimous vote, was announced:—

"The single following question having been put to the members of the court, 'Is Captain Alfred Dreyfus, captain in the fourteenth regiment of artillery, detailed for staff duty and to successive details in the separate departments in the general army staff, guilty of having in 1894, at Paris, delivered to a foreign power, or to its agents, documents concerning the national defence? and has he thus dealt with or had communication with that foreign power, with the effect of inducing it to commit hostilities against France or of furnishing it with means thereto?' the court declares unanimously, 'Guilty,' and . . . condemns Alfred Dreyfus, whose titles are given above, unanimously, to the punishment of perpetual banishment in some fortified place." From this conviction Dreyfus appealed to the proper appellate court, and this appeal was rejected.

We must next return to the facts of the case as they are now known, and state the

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charge and the evidence. But it is important to remember that what follows has all come out subsequent to the trial.

The charge on which Dreyfus was tried was that he wrote and sent a memorandum, or "bordereau," brought in by a spy and said to have been found in fragments in the waste-basket of a foreign embassy in Paris. There is no doubt on either side that it is an authentic and treasonable document; and, except for a mere pretence of secrecy, it is agreed that it came from the German Embassy. The text follows:—

"Without news indicating that you wish to see me, I send you, nevertheless, Monsieur, some important information:—

"1. A note on the hydraulic buffers of the 120 [millimetre cannon] and the manner in which this piece behaved.

"2. A note on the troops for covering service. Some modifications will be effected by the new plan.

"3. A note on a modification in the formations for the artillery.

"4. A note relative to Madagascar.

"5. The draft for the firing manual

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for the field artillery service (14th March, 1894).

“The last document is extremely difficult to procure, and I can have it at my disposition only a few days. The Minister of War has sent out a fixed number of them in the corps, and the members of the corps are responsible for them. Each officer who has one must turn it in after the manœuvres. Therefore, if you wish to make extracts of what interests you and have it ready against my call for it, I will get it back. Unless, that is, you wish that I should cause it to be copied — the whole — and send you the copy.

“I am just off for the manœuvres.”

As this name “bordereau” has been mainly used, I use it entirely hereafter, even when the French would otherwise be better translated by another word.

The bordereau showed a more or less extensive acquaintance with documents, and directed suspicion against the staff office. An investigation was made by comparison of handwritings in the department, and a strong similarity seemed to fix it on Dreyfus.

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Handwriting experts were then called in and compared the bordereau with specimen of the handwriting of Dreyfus. Much has turned on their testimony, which was as follows:—

M. Gobert, expert, attached to the Bank of France and the Court of Appeal, was first called in. But he had the curiosity to ask the name of the accused, and was promptly relieved from the duty. He made a report, based on his partial examination, to the effect that “the incriminating bordereau may well be by another hand than that of the person suspected.”

M. Bertillon, the celebrated criminologist was next employed, and Oct. 13, 1894, sent in his formal conclusions, as follows: “If one puts aside the hypothesis of a document forged with extreme care, it follows most obviously that the bordereau is by the hand of the person who wrote the other letters.” In a later report, October 23, he says “The proof is made, peremptorily. You know what my opinion was the first day. Well, my opinion is now absolute, complete, and entirely without reserve.” MM Teyssonnières and Charavray reported that

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the bordereau was written by Dreyfus in a rapid, flowing hand. M. Pelletier declined to attribute it to any one on the evidence before him. Teysonnières and Charavray had the benefit, or the burden, of working under Bertillon's guidance and influence. Pelletier did not. All except Bertillon were professional handwriting experts. He was not an expert specially on that point, but the celebrity which he has gained by his system of identifying criminals would give any considered opinion of his much weight. The mode of reasoning on which he relies to support his views is set forth in a diagram, of which I give a reduced copy on the following page, omitting the legends from their places on the diagram. The theory is that the traitor wrote the known documents in his natural hand and the incriminating bordereau in a hand so feigned that the apposite illustration of the effect is to be found in a picture of a fortification in which the different points of feigning fall naturally into their places as parts of one defence against discovery. Let the reader then endeavor to discover in the diagram (I quote M. Bertillon's legends): —

1. "The point from which an attack would be delivered by the police if they had the bordereau, without other indication of the author."

3. The battery formed by double *s* with the second *s* written long.

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(*espion*), specially brought up to use his right hand, but nevertheless able to use his left," etc.

Or let the reader figure out for himself.

5. The plan of defence in case of attack, coming from the right of the diagram.

The diagram proves many other things according to M. Bertillon; but these are typical. Bertillon's final and definitive theory was that the bordereau was an imitation by Dreyfus of his own handwriting, made with the idea that by this trick he could most safely avoid conviction. He could say, "It is my own handwriting traced by a forger to incriminate me." M. Bertillon has recently abandoned this diagram for a new demonstration, because he found that no one could understand the first. The new one has not been current long enough as yet for any one to understand it.

The other evidence against Dreyfus at this trial seems to have been entirely indirect. A motive was sought in his anger at not graduating better, and in relations with mistresses, who might have demanded more money than he could safely retain for them out of his family income. From the Ameri-

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can standpoint, his private life even after his marriage seems to have had a doubtful passage or two of this kind. His French advocate brushes them away as merely a few "trifling smuts" on his character; and his wife seems to love him devotedly, and to work with sustained energy for his justification. In addition to this class of evidence, there was also a fairly large body of military evidence to the effect that he was a prying person in the department, and that this fact and his different details tended to fix on him as the probable person to have had in his control the evidence indicated in the language of the bordereau. This kind of evidence on both sides has furnished perhaps the most voluminous part of the controversy. According as one does or does not believe in the guilt of the accused, one may satisfy himself completely either that no other officer could have written the paper or that Dreyfus never had in his control the documents mentioned. Even on the preliminary question of what documents are designated by it, the quantity of discussion is enough to overwhelm a layman.

It is said that after the trial he confessed,

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and this is much urged against him. The scene of the alleged confession is laid just before the time and place of his degradation. Two officers are said to have received the confession. One is dead. The other, the officer in charge of Dreyfus at the degradation, is Captain Lebrun-Renaud of the *Garde Républicaine*. No first-hand statement from him has been available until his very recent testimony before the Court of Cassation leaked out. The controversy, up to this spring, was therefore based on second-hand statements on both sides. Some apparently reliable witnesses say positively that they heard from Lebrun-Renaud that there was no confession. More important witnesses, but persons more likely to color the story in repeating it, report positively that both officers told them that Dreyfus broke down at the degradation, and said that he had given out documents in the hope of getting more valuable papers or information in return, and said it in such a manner that it was practically a full confession with a weak excuse. The hypothesis of such an attempted exchange had been urged strongly on Dreyfus in the attempts to get him to confess; and the pro-Dreyfus point

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of view is that he probably said: "You say yourselves I did it as a patriot to get a better return. Why, then, am I a traitor?" On the other hand, it was Lebrun-Renaud's duty to make a written report of the degradation. In this he makes no mention of any confession, and when, in the latest stages of the case, the War Department was called upon to put its best foot forward, it produced only a third person's report on the question dated and written as late as Sept. 16, 1898. But there is said to be a fairly contemporary memorandum of the confession by Lebrun-Renaud in his notebook; and a prominent and honest general, Gonse, wrote a letter about it the day after the trial. On the whole, the evidence on the subject of confession stood about equally balanced, with the weight apparently in favor of confession. And, when Lebrun-Renaud at last went on the stand to testify, he brought forward an evenly balanced paragraph as the words of Dreyfus: "I am innocent" and "If I gave up documents" stand side by side for one to choose from. If the witness's interpretation is to be believed, it was a confession. But why, then, did Du Paty de Clam seek to procure

SECRET TRIAL OF DREYFUS

a confession even after the conviction and this scene?

After his conviction on Jan. 5, 1895, Dreyfus was publicly and dramatically degraded before troops and in public. There was much ceremony, and much clamor. Throughout the whole he never ceased to proclaim his innocence. I take the account of this scene from the *Autorité* (anti-Dreyfus) newspaper. When General Darras said: "Dreyfus, you are unworthy of carrying arms. In the name of the French people we degrade you," Dreyfus answered, in a steady voice: "I am innocent! I swear that I am innocent! *Vive la France!*" And, as the ceremony went on: "On the heads of my wife and of my children I swear that I am innocent! I swear it! *Vive la France!*" As his signs of military rank were removed, he cried, "You degrade an innocent!" and again, as he was paraded to show his indignities: "I am innocent! *Vive la France!*" As he passed the table reserved for the press, "You will tell all France that I am innocent." The French press was quick to do justice to the position which the larger part of it has since maintained; and the cries came back: "Rascal! Traitor! Judas! You

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know that you lie! You dirty Jew!" All the while the spectators cried, "Death! Death!" as their Roman ancestors before them had turned down their thumbs. Then Dreyfus passed in to undergo more strict imprisonment, and to be deported to French Guiana to the *Isle du Diable*.

THE LEGAL SITUATION.

Dreyfus being once convicted, the question how legally and morally to establish his innocence becomes important to those who assert that he is innocent. As the legal side of the situation has had an important effect on the campaigns both of his enemies and his friends, it is here stated.

In the first place, except so far as the law may point out a definite road to a revision of the verdict, the judgment is conclusive in law as the final settlement of the issue there tried. The French phrase for this is *chose jugée*. English and American lawyers recognize the same principle, and use the Latin phrase *res judicata*. In our law the principle is usually stated with the following limitations in about the following form: A judgment, unreversed, is conclusive on all the issues involved in it as between the parties. This principle, French or English, in its general application, commends itself to any one's intelligence. Any layman will accept it except a litigant who has been beaten and feels its effect. One cannot go on with successive trials until all parties have had enough. There is no logical point to

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stop except at the end of the first properly conducted trial. And there is no logical point to stop discussion of the question whether the trial is properly conducted short of the express reference of that question for decision to the proper appellate court by an appeal such as the one Dreyfus took. These remarks apply to the general application of the principle. It may be a question whether any exception is desirable; I believe that one is in criminal cases. The French law contains such an exception, while English and American law seems to me distinctly inferior in lacking any such provisions. For an instance of American law, I cite the case of *Greene against Greene*, 2 Gray (Massachusetts Reports), 361, where that great lawyer and judge, Lemuel Shaw, laid it down that a woman who could prove that a divorce had been obtained by her husband by deliberate fraud and perjury could not have that divorce annulled, because the judgment of divorce was conclusive against her. *Greene against Greene* is a civil case between private parties. There is no doubt, however, that the same principle applies in criminal cases. The plea of a former conviction or a former acquittal as a defence to a charge of crime

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is a familiar illustration which has received special constitutional protection in the clause in the United States Constitution which says, "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." And the converse application of the rule for the State is well supported by authority. For instance, a man was tried for an assault, and convicted. Subsequently the victim died; and a prosecution for manslaughter was begun, in which the accused set up that he acted in self-defence. But the court ruled that, even in this case, the first judgment of conviction established past dispute that the original assault could not be justified. Of course, English and American law, being practical, finds a way out of this in criminal cases by the use of the irresponsible prerogative of pardon. That, in legal theory, is an act of grace to the guilty; and it does not seem to me to be as good relief for the innocent as the French method of relief in the courts.

The French Court of Cassation has the powers of an ordinary appellate court,—powers, that is, to determine questions of law on appeal from the local and lower courts. That is its chief and normal function. In

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that its position corresponds to that of our Supreme Court. It has also powers of "revision" in criminal cases, designed to meet the needs of cases like the Dreyfus case, and to do justice to them.

Revision may be had on four different grounds. Two may be here neglected; namely, the case where, after a condemnation for homicide, doubt arises whether the victim is dead or not, and the case when a witness at the original trial has been tried and condemned for actual perjury at that trial. On the third ground, revision may be had "when a person shall have been duly condemned for a crime or offence for which another person has already been condemned, and such condemnations are not reconcilable with each other, the contradictory judgments being a proof of the innocence of one or the other condemned person." We shall see hereafter how important this ground was in the Esterhazy trial. The fourth ground is the basis of the present revision proceedings. A new fact or new documents "unknown at the time of the first trial, . . . tending to establish the innocence of the condemned person," is good ground for revision. This is obviously broad enough to

THE LEGAL SITUATION

cover almost any claim that better justice is possible in the light of subsequent experience. If it were subject to no restriction, almost any case might be retried at any time. Accordingly, in this fourth case there is a vital qualification. On the first three grounds for revision, any one with a reasonable interest in the subject-matter may demand the redress as of right, and force a new trial, if he can prove the prescribed facts. In the fourth case, only the Minister of Justice can petition for revision. This seems a fair and right limitation, for a much larger opening for continuing discussion of guilt after a formal judgment would deprive judgments of the whole result sought by trials. They would then practically have no finality at all. And the Minister of Justice seems to be the proper person to exercise this discretion. For he knows, generally, the whole government evidence, as well what was used at the trial as what was withheld for any motives of policy, and can tell how far worth while a new trial would be if it should be brought about. A case of revision goes in France through several stages with different possible endings. After the petition for revision is brought, the Court of Cassa-

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tion decides, first, whether the case made by the facts alleged to be true is a case for revision within the law. If it is, it declares the demand for revision to be admissible. The court thereupon proceeds to the next stage,—to take evidence directly (or it may commission others to take it) on the truth of the allegations of the petition. According to the strength of the case made, three results are possible. The court may deny the prayer for revision, it may order a new trial, or it may declare the condemned person to be innocent. If by its declaration, or as the result of the new trial, the innocence of the condemned person is established, he becomes entitled to full compensation from the State for the injustice done him.

A serious breach of judicial decency, like the communication of secret documents to judges behind the back of an accused, such as will be hereafter suggested, is perhaps not a new fact, which could be the subject of "revision" proceedings. Such a flaw in judicial honor is a case for "annulation," not for "revision."

The code is clear enough on the surface.

The Ministry of Justice—but no one else—may denounce a sentence as rendered

THE LEGAL SITUATION

contrary to law, have the judgment annulled, and the judges prosecuted. But the same difficulty comes in which has led to the proverb about Greeks bearing gifts. The prosecution in the Zola branch of the Dreyfus case concede the law to be to this effect, and they seem to dare the Dreyfus side to come on and try it. Dreyfus has shrewd enough lawyers on his side; but, if they have made any move on this ground, it has not gone far or been effective. It may be that this is held in reserve as the next step if revision is denied. It may be that in the practical working of the law, which only a French lawyer could pass on, there is some barrier: it may be that lapse of time bars such proceedings. In short, whether the code in practice leaves any loophole for Dreyfus to get "annulation" at this late date, if he may not have revision, is not for me to say, but for some French expert. If there is such a chance, the French law is better than ours for the criminal. If there is not, it is no worse than ours.

On the one hand, then, the mode of revision of a conviction seems to be better in France. On the other hand, perhaps because of this very fact, the French govern-

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ment has tried, in the Dreyfus case, to apply the principle of the *chose jugée* with a rigor which seems to an American lawyer grossly illegal, even if it were consistent, but also a rigor which shows marked relaxation when the effect is against Dreyfus, and none when it would be for him. It has been asserted, and the assertion put into practice,—for instance, in the Zola trial,—that the conviction was conclusive on all the world for all purposes, so much so that Zola's assertion that the trial was unfair was not allowed to be proved because the judgment of conviction — where he had no chance to be heard, and to which he was not privy — was thus conclusive of its own legality. Both of these things — the chance of revision, and the assertion that the judgment is final to an extent which has no parallel in our law and, I believe, no good precedent in the French law — are important. They have so far colored the later proceedings that they should always be borne in mind hereafter.

THE LEAKAGE OF EVIDENCE.

The conviction of Dreyfus was not entirely expected. Strong sympathy may well be excited when one convicted on such a charge protests his innocence so dramatically. In the years succeeding that conviction a campaign by the believers in his innocence—his family, and others as well who had no such private motive—was carried on, growing constantly in force until it culminated in the winter of 1897–98. It is not my purpose to trace this campaign. The Ministry of War in public proclaimed itself infallible under circumstances which must preclude patriotic Frenchmen from discussing or testing its infallibility. But step by step the evidence and the party for Dreyfus grew in force. Let us come at once to the prologue of the second act, and see what had been accomplished in the fall of 1897.

While officially silent, the government, instead of opposing to the suggestions of innocence an unbroken front, had undertaken a semi-official defence of the conviction in the form of allowing leakage of some of the evidence and grounds for the con-

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viction. Whatever one may think of the innocence or guilt of Dreyfus, this leakage has proved itself a bad tactical blunder and a stupid one. If there is any ground for saying that it was without the government's consent, the admission of inefficiency in the keeping of secrets, which this version implies, is worse than the other charge.

At the beginning of 1898, then, the text of the bordereau had been published, first in plain print and then in fac-simile by anti-Dreyfus newspapers, the latter publication opening up possibilities for finding out the real author which had not previously been available. The report of Commandant Bexon-d'Ormescheville to the Dreyfus court-martial was published a little later, Jan. 8, 1898, by the *Siècle* (Dreyfus) newspaper. This report, corresponding as nearly as may be to an indictment in our law, also includes a statement of the evidence such as would be made with us in opening to the jury a case against a prisoner. It showed the charge and the general line which the evidence would take, and implied the absence of any other or more direct evidence at the trial.

Most important of all, a rumor — more than a rumor — had started, and had not

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been denied, that a gross breach of law and of judicial propriety had occurred in the Dreyfus trial. This began by the publication in the *Éclair*, an anti-Dreyfus paper, of Sept. 15, 1896, under the heading of "The Traitor," of an article which stated its purpose to be "that not even a single man may hereafter in his conscience give the traitor the benefit of a doubt," and to produce "the proof, the irrefutable proof of the treason." This proof consisted in the statement that, after the Dreyfus court-martial had retired for consultation, additional evidence was submitted to them behind the backs of the accused and of his counsel, — evidence considered to be politically so important that this privacy was defensible, and evidence of such weight that it proved treason conclusively, and insured conviction. This evidence was stated by the *Éclair* to be a letter intercepted and photographed on its passage in Paris from one foreign attaché to another, written in cipher, but deciphered, and reading in the part relative to Dreyfus as follows: "Decidedly that animal of a Dreyfus is becoming too exacting." The true weight of this particular document will appear hereafter. The fact of such secret communica-

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tion of a document or documents has never been even half-heartedly denied or disproved, although direct disproof by the statements of the members of the court-martial would seem easy enough, if it were not true. The government, so far as it has been consistent, has been silent, or has said, "After the conviction, there is nothing left in the Dreyfus case which we ought to discuss in public."

All these things brewed together with the following results. The investigation by the Dreyfus family led them to the hypothesis that Commandant Walsin-Esterhazy wrote the bordereau. They were started on this by a striking circumstance. When placards with the "Proof of the Treason"—*i.e.*, photographic reproductions of the bordereau—were being hawked on the boulevard, M. Castro, Esterhazy's stock-broker, who had the familiarity with his handwriting that one often has with a debtor's, saw the resemblance immediately, went home and made the comparison, and satisfied himself of the identity. M. Castro had not been previously interested in the case, and did not know the Dreyfus family; but after this he took his information and his letters to M. Matthieu Dreyfus, brother to Alfred.

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Another independent investigation was being carried on in the best of places and with the best of resources. Lieutenant Colonel Georges Picquart, attached to the Secret Service Bureau, had been detailed to represent it at the Dreyfus trial, but had apparently taken no great part there. Subsequently he became chief of that bureau; and, in the ordinary course of service,—and, if he may be believed, with the Dreyfus case not in his mind,—a document was brought in by a spy, which started him on the same road and led him to the same conclusion which the Dreyfus family had reached. This document has been the source of as much discussion as the bordereau. It takes its name from the fact that it is written on the blue ten-cent stamped letter-sheet which the French call a *petit bleu*, and which is used for the pneumatic tube service in Paris. Its text was and remains unimportant; but, as it has been the subject of much discussion, I give it here:—

“I await, before anything farther, a more detailed explanation than you gave me the other day on the question now in suspense. In consequence, I

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request of you to give this to me in writing, that I may judge whether I can continue my relations with the house of R. or not.

“TO M. LE COMMANDANT ESTERHAZY,
“27 Rue de la Bienfaisance, Paris.”

Its value is in the facts that it was found in the waste-basket of a foreign embassy (as if it had been written to send, and then discarded by a change of plan and thrown away), and that it is addressed to Esterhazy. It had no probative force, no value except to direct suspicion against Esterhazy. It is fair to say, however, that the anti-Dreyfus side do not seem to regard it as unimportant; and Picquart is now under arrest on the charge of forging it. He next investigated Esterhazy's character, and found it to be thoroughly bad: everybody now admits that. His own account of his next step follows:—

“There is a thing that we generally do when we are concerned with somebody whose relations appear suspicious. We take a specimen of his handwriting, and we compare it with certain documents that we pos-

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sess [*i. e.*, documents brought in by spies]. This comparison may confirm or it may throw doubt on our suspicion of the person. I therefore devoted myself to the handwriting of Commandant Esterhazy. . . . With the approval of my chiefs, I went to the colonel of the regiment to which Commandant Esterhazy belonged, and asked for specimens of his handwriting. These were furnished in the form of letters written in course of service. From the moment that I had the letters in my hands, I was struck forcibly with one thing,—the resemblance of this handwriting to that of the bordereau we have heard so much about. But I had no right, not being an expert in handwriting, to trust to my personal impression. For this reason I had photographs made of Esterhazy's service letters, concealing . . . the indications which could put any one on the trace of the author, such as 'My Colonel' or the signature; and I showed the photographs thus made to two persons perfectly qualified to give an answer on the point,—Bertillon and Du Paty de Clam. Bertillon, as soon as I showed him the photographs, said, 'That's the handwriting of the bordereau.' I said: 'Don't hurry yourself. Take the sheet, and

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examine it at your leisure.' He answered: 'No, that is useless. It is the handwriting of the bordereau. Where did you get it?' 'I can't answer you.' 'Well, it is of a period prior to the time of the bordereau.' I answered, 'No, subsequent.' Then M. Bertillon said these words: 'The Jews have had a year in which to train some one to the handwriting of the bordereau. They have succeeded perfectly. That is clear enough.'"

Du Paty de Clam's answer was equally satisfactory, though in different terms. Picquart then felt himself justified in urging on his superior officers the prosecution of the inquiry thus laid out. Instead of sharing his views, however, they took the ground that the Dreyfus case was to be let alone; and, Picquart remaining persistent, he was detached from the Secret Service Bureau and sent on an aimless tour about the country, which was clinched with an assignment to Algeria.

M. Scheurer-Kestner, vice-president of the Senate, was known to take an interest in the case. He was regarded as a statesman in good standing, whose moral support was valuable to Dreyfus; and this not un-

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naturally made him the recipient of confidences on that side. In June, 1897, Picquart, on a fortnight's vacation from Algeria, having just received a menacing anonymous letter about his connection with the Dreyfus case, thought it prudent to place himself in the hands of his lawyer, M. Leblois. M. Leblois turned to M. Scheurer-Kestner, and the latter in this way got some rather confidential information tending to prove Esterhazy's guilt. Quite independently, M. Matthieu Dreyfus came fresh from M. Castro's discovery to enlist M. Scheurer-Kestner's interest. The latter said, "My information is confidential." M. Dreyfus answered, "But, if I can give you the name, the very name your investigations indicate, what then?" And Scheurer-Kestner replied, "In that case I should consider myself free to say yes to you." M. Matthieu Dreyfus named Esterhazy, and Scheurer-Kestner advised him to go immediately to the Minister of War with his complaint.

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Nov. 14, 1897, M. Dreyfus formally denounced Esterhazy at the Ministry of War, basing his denunciation on the resemblance of handwriting. Esterhazy, for his part, was almost equally prompt in demanding a trial to clear himself. But it seems to have since been established that the denunciation had leaked out sufficiently in advance to enable him to decide on his course of action, and that he was receiving advice, protection, and encouragement from at least the smaller and less reputable officials in the War Department. When he first got wind of the charge, he declared that he was "undone." A preliminary investigation by General Pellieux led to a report that Esterhazy was innocent. The formal and official investigation by Commandant Ravary, corresponding in its nature to the D'Ormescheville report in the Dreyfus case above described, stated that Esterhazy was innocent, and recommended that the prosecution be dropped. Esterhazy was held by the War Office, however, to be entitled to a clearance by a public trial, which came about Jan. 8, 1898, in the same place as the Dreyfus trial,

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fore a like court-martial. Picquart, on the instance of Scheurer-Kestner, had been recalled, that he might be available as a witness. The case began by an attempt on the part of Mme. Alfred Dreyfus and M. Mathieu Dreyfus to be admitted as "civil parties" to the trial. This is a convenient and easy way, which the French have when private and public rights depend on the same set of facts, of having the whole matter hashed out at one hearing. For instance, the case of an assault which was both a crime and a private injury, they would try both the facts but once; and the same jury would return a conviction for the crime and damages to the injured party as compensation. It does not exist in our law. In France it seems to assist materially the cause of good justice. The judgment of the court was—and I think it was correct—that "civil parties" had no place in a court-martial. The court took occasion, however, to add to its finding, as an additional reason, that it had nothing to do in any view with the case of Dreyfus, "who has been justly and legally condemned." After this indication of the court's opinion, the trial can have shed out little hope to the Dreyfus party.

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Here was Esterhazy on trial for writing the bordereau; and the court, before hearing any evidence, based a finding on the premise that Dreyfus had been justly and legally convicted of writing it. More than this, the whole object of the trial,—and will any reader who is not clear, turn back and see what we have said on page 24 about the third ground for revision?—the whole object of the trial was to pursue the course carefully marked out by the French law to be pursued in seeking revision of a sentence. The law says that after a first conviction revision may be had if you can secure another irreconcilable conviction proving a second man to be guilty of the first offence. You denounce your second man, and his trial begins by the statement that it is past contradiction that the first man did it! Even the government did not seriously take the view that the court-martial was there to try the case. Just previous to the trial the Minister of War, answering a question put to him in the Chamber of Deputies, had declared: "Dreyfus was properly and justly judged. For myself, on my soul, on my conscience, as a soldier, as chief of the army, I consider the judgment properly rendered; and I consider Dreyfus guilty."

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After that the court-martial knew what was expected of it, and did its work.

The trial commenced by the reading of Commandant Ravary's report on the case. This summed up the views and evidence of Matthieu Dreyfus and Picquart, and then turned to Esterhazy's story, which was, briefly, that he had been informed in October of a plot against him started by Picquart, that subsequently a "veiled lady" gave him a rendezvous on the Bridge of Alexander III, where he had three interviews with her, and came away from the last the day before his denunciation with the *document libérateur* in his possession. This was a paper which had, prior to that time, been on the secret files of the War Department, and which was supposed to clinch the proof of his innocence. He promptly turned this paper in to the Ministry of War as his proof. The bordereau was not his handwriting, he said, although the resemblance was so striking that one would say it was a tracing from it. The *petit bleu* had no value as proof, and was, at any rate, a forgery by Picquart. So much for Esterhazy's story. MM. Belhomme, Varinard, and Couard—the report went on—had been employed as official experts, and

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had reported that the bordereau was not the work of Esterhazy. "These conclusions, so categorically stated," says the report, "entirely destroy the effect of the charge made by M. Matthieu Dreyfus." The report next turned to a violent attack on Picquart, and suggested that he should be put on his trial, and ended, admitting in a casual parenthesis that Esterhazy's private character was bad, with the statement that "in reality there is no substantial legal proof of guilt." After this the actual hearing began by the interrogation of Esterhazy. The first material question is a leading one. "How did you learn of the *plot* against you?" and showed the tone of the court, if it needed to be shown. Esterhazy then went on to state his theory that Dreyfus had secured his handwriting, and had written the bordereau by tracing from it in order to protect himself by incriminating Esterhazy. He declaimed against wrongs which Picquart had done him in the investigation previously described. Then the president read commendatory reports of some of Esterhazy's superior officers from old war department files. Esterhazy cried out, "The appreciation of my chiefs may well balance what interloping police agents throw out

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against me"; and the court proceeded to hear M. Matthieu Dreyfus, who stated his views and his case, M. Scheurer-Kestner, who told what he knew and had to say, and other witnesses of minor importance. It then went into secret session to hear Picquart, the officers of the general staff, and handwriting experts. January 9 Esterhazy was acquitted by a unanimous vote. Apart from the usual discussion on the question whether his service was such that he could have procured the documents named in the bordereau, the issue seems to have been put on the question of handwriting; and the testimony of the experts, as it soon leaked out, was to the following effect: "The handwriting seen in the bordereau is, undoubtedly, the handwriting of Esterhazy. On examination, however, it proves to be his handwriting forged and traced with skill by Dreyfus to conceal his own authorship." And the absurdity did not stand in the way of the acquittal of Esterhazy. This naturally offers itself at once for comparison with the fact that Dreyfus was convicted because it was his own handwriting, and therefore proved his guilt. But the public did not fully grasp this situation until during the Zola trial, which immediately succeeded.

THE ZOLA TRIALS.

It had been hoped that, if the question of the authorship of the bordereau were well threshed out in the Esterhazy trial, the Dreyfus affair would get to an end one way or the other. Certainly, such a trial did not end discussion; and the government were not allowed to rest quiet. M. Emile Zola, apparently feeling that he could force the real issue to a trial, on Jan. 13, 1898, addressed to M. Félix Faure, President of the Republic, an open letter, which stated the Dreyfus case strongly enough and with the effect of force and sincerity which only a strong writer could produce. The letter recites the facts from the Dreyfus point of view, with unmistakable language and strong adjectives, summing up with eight paragraphs, each beginning, "I accuse," and each summing up one of the leading charges of injustice. The last of these paragraphs is as follows: "I accuse, finally, the first court-martial of having violated the law in its conviction of the accused on the strength of a document kept secret (from him); and I accuse the second court-martial of having covered this illegality, acting under

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orders and committing in its turn the legal crime of knowingly acquitting a guilty person." The letter ends by a request that he may be prosecuted for the libel. It was published in the *Aurore* of Jan. 13, 1898, and contains about five thousand words; that is to say, it is about a third of the length of the present book. It certainly possesses literary unity as a substantial statement of the case and as a violent arraignment of the anti-Dreyfus side. January 20, the government commenced a prosecution on a complaint by the Minister of War, which set forth as the libel on which Zola was to be tried three paragraphs from different places in the letter, containing, respectively, forty-five, thirty-seven, and twenty-five words, and each containing, separated from any context, a piece of the charges against the second, or Esterhazy, court-martial. At the trial on this charge in Paris, Feb. 7 to 23, 1898, the government and the court took the position that the Dreyfus case was *chose jugée*, and that the libel charged did not relate to it, but to the Esterhazy case, and that the latter alone was open for discussion; that the only issue was the truth or falsehood of the excerpts from the Zola letter, and that no

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army secrets were to be touched on, even if relevant to that issue. Now, as Dreyfus had been convicted of writing the bordereau, and Esterhazy had been acquitted of writing it, the distinction between the cases proved to be one which could not be lived up to. It was used to suppress a considerable amount of testimony; but a considerable amount of evidence on the Dreyfus case got in, especially, it would seem, when the government wanted to counteract any effect produced by the defence. It is hard for one not familiar with the French courts to say just how far the trial was out of the ordinary. Certainly, to one accustomed to an American court it seems extraordinary enough. The witnesses on both sides appear, and tell all they think about the case. Military witnesses appear in full uniform; and one, General Pellieux, demands of his own accord that he be recalled to state something important. This was the striking incident of the trial. It came just after the strength of the Zola case had been put in. Pellieux went on the witness-stand, and said: —

“At the time of the Castelin interpellation [1896] there was a fact which I want to point out. The Ministry of War held — remark

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that I am not speaking of the Dreyfus case — absolute proof of the guilt of Dreyfus,— absolute; and this proof I have seen. At the moment of that interpellation there arrived at the Ministry of War a paper the origin of which is incontestable, and which says,—I will tell you what it says,—‘There is going to be an interpellation about the Dreyfus affair. You must never disclose the relations which we had with that Jew.’ Then he refuses to be cross-examined, and General Gonse steps to the stand and says, ‘I confirm General Pellieux’s statement completely.’” Pellieux next from the stand gives an order to an officer in the audience to “go and get General Boisdeffre at once, that he may confirm it.” But the excuse of army secrecy, while it did not prevent this declaration, was enough to prevent all investigation into it and all cross-examination, and to block all the attempts to get the document itself for an examination of its value and worth. Nor was this the only time that cross-examination was refused. While this is the most striking incident of the trial, the most amusing is probably the attempt to cross-examine Esterhazy, and, indeed, to examine him at all. He went on the stand,

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took an indignant air, and absolutely declined to answer any questions put by the wicked defence. Now the defence could expect but scant sympathy from the court in any attempt to force an answer. They took a far better course in putting questions so framed that it was worse to refuse to answer them than to speak. Since his momentary popularity, after his acquittal, Esterhazy, never seriously set up as a reputable character, had been completely discredited by the publication in the *Figaro* of letters written by him which showed him up in a thoroughly bad light. It cannot have pleased him to stand there, and hear read a letter ending with the climax of "Paris taken by assault, and delivered over to the pillage of a hundred thousand drunken soldiers. There is a feast of which I dream. May it come to pass!" The passage in this letter in which he says, "Were I killed to-morrow as a captain of Uhlans, as I was cutting down Frenchmen with my sword, I should be perfectly happy," has given it the name of the Uhlan letter. Any shreds of his reputation which were left were pretty well destroyed; and the government, which had protected him in court and outside, cannot have felt proud of its protégé.

THE ZOLA TRIALS

On the whole, it is probably fair to say that the rights of the defence received scant courtesy in the trial court. Zola was found guilty,—the rumor is that the jury vote was seven to five,—and he was sentenced to a year's imprisonment and a fine. Then his counsel took an appeal on grounds naturally numerous, covering almost all the injustice which had been done at the trial, and including other technical grounds. The two grievances which most needed redress by the appeal were the refusal to let Zola treat his letter as a whole, and defend the whole instead of little pieces without context, and the application of the rule of *chose jugée*. The Court of Cassation set aside the conviction, without discussing either of these points, on the single technical ground that the prosecution ought to have been commenced by a complaint signed by the Esterhazy court-martial instead of one signed by the Minister of War. After this decision it was hoped, on both sides I think, that the matter would be allowed to drop. But the government did not accept this view. It assembled the court-martial, which promptly signed a complaint; and a second and third Zola trial took place. The government,

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having the choice of courts, chose to prosecute this time at Versailles. These trials were both fiascos. The government had, in Zola's opinion and that of his counsel, chosen Versailles because it felt sure of a conviction there. The charge also had been more cynically drawn, with a view to conviction. Instead of three excerpts and a hundred words, a single excerpt had been chosen with only nineteen words and no embarrassing context or reference. The defence stopped the second trial by an ineffective appeal, tried again to do so at the third, and, failing, let the case go by default. If it had succeeded in either appeal, the short three months' statute of limitations, which the French wisely have for press libels, would have prevented another prosecution. Zola was again condemned; but, when it was sought to put the sentence into force, he was no longer in France, and farther prosecution of this branch of the case stopped short for want of a defendant. More than this, French law by a curious and probably accidental provision requires service of notice of such a default on the accused. If this service be made on him in France at any time within five years, he may then step

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forward and claim a new trial despite the default. In substance, this means that Zola may return at any time in the next five years and stand his trial. The Court of Cassation has never passed on his claim to be tried for the letter as one whole; and, if it should pass favorably on it, and take a normal view of "*chose jugée*," a final trial might let in all the light desirable on the Dreyfus story.

The second Zola trial has one humorous spot. At the first, in Paris, the populace gathered about the doors as Zola came and went. They tried to mob him, and shouted, "*Conspuez Zola!*" and, I imagine, did it. At Versailles Zola arrived and left on a large steam automobile, at full speed. He was followed and shouted at. "But fatigue soon got the better of those whom the police had not held back."

I have not tried to state in chronological order the evidence which this case brought out, and I now outline only enough of it to show how the Dreyfus question stood at the end of the incident. In the first place, the famous document of the *Éclair* — the cipher deciphered and proving to read, "That animal of a Dreyfus," — was established to be a

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document not in cipher, reading, "That animal of a D." The probative force of the latter is not enough to satisfy one of any treason. It was established that there was at least one secret portfolio (*dossier*) of documents about Dreyfus,—in itself a proper enough thing, if it merely means that the War Department had some documentary evidence on its secret files. Nothing farther had occurred except General Pellieux's disclosure to show what proof of this kind the government might have. It was established that some documents had been shown to the Dreyfus court-martial behind the back of the accused, as far as that could be proved by indirect evidence from one side. The absence of direct evidence from the other side, which had plenty in its power, did not help against this point. It was established that Dreyfus was convicted of writing the *borde-reau* because it was his own handwriting, and that Esterhazy was acquitted of writing it because it was a tracing by Dreyfus of Esterhazy's handwriting, made to conceal his own. It was known that Esterhazy was a rascal. And still the government and the War Department held its official silence, saying: "Dreyfus is guilty of some treason,

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we have proof. But we cannot safely disclose the secrets of that proof."

The end of the Zola trial also marks the beginning of lively subsidiary litigation about the Dreyfus case. Esterhazy, Esterhazy's mistress, and Du Paty de Clam were prosecuted at Picquart's instance for forgery of anonymous letters and telegrams to him. Later Du Paty de Clam was retired and Esterhazy cashiered for complicity, among other things, in the extraordinary circumstances by which a secret document got off the War Office files and into the hands of a cock-and-bull veiled lady on a Seine bridge in the dark of night and at the nick of time. Picquart was prosecuted for forging the *petit bleu*, and later for disclosing secret service matters to his lawyer. There seems to be reason to believe him technically guilty of the latter offence. Zola was sued by the handwriting experts for libel. In fact, the undercurrents which are now so confusing, which make the Dreyfus affair in all its bearings too voluminous for any one to describe faithfully, all now set in. All of these have value mainly to a student of the details of the case, except, perhaps, Esterhazy's "revelations," which are considered trustworthy

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or not as one desires to prove something by them or not. The one important result is to soil the reputation of the subordinate officials of the general staff of the army, by showing the existence of illicit relations between Esterhazy and Du Paty de Clam and other officials. But, except so far as the mud which sticks to the general staff affects our belief in the value of its official silence, these things do not affect the general course of the case.

THE HENRY CONFESSION.

Aug. 30, 1898, at midnight, a French press agency issued the following official despatch: "To-day, in the office of the Minister of War, Lieutenant Colonel Henry was recognized as, and admitted himself to be, the author of the letter of October, 1896, in which Dreyfus is named. The minister immediately ordered the arrest of Lieutenant Colonel Henry, and he was taken to the fortress of Mont Valerien." This was the document which had caused such a sensation at the first Zola trial. Henry had been in the Secret Service Bureau under Picquart, and had succeeded him as its head. He had been one of the most violent denouncers of Dreyfus and of Picquart, and, from his position, the best-informed person who took the anti-Dreyfus side. M. Cavaignac, who had succeeded to the office of Minister of War, had been conducting, with entire confidence in the guilt of Dreyfus, an investigation into the secret documents, to refute in his own mind the charges of the Dreyfus newspapers, which said that they were forgeries. This particular document had been supposed to be authenticated by the fact that it was on the

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same paper as a truly authentic one of an earlier date. A close examination proved that the papers differed; and the search for some one to explain this was limited to those who had had access to the Dreyfus secret portfolio, since he who forged the second must have known the peculiarities of the first. Colonel Henry was the official who had said that a spy had brought in the second to him. He was called in, and cross-examined; he lost his head, made untenable explanations, and confessed. His excuse was that "I wished a document sufficient to clinch the proof of the guilt of Dreyfus." And his attitude was such that it is not unfair to believe that he thought he had done it from love of country, and merely to stop discussion of the guilt of which he was otherwise certain. Mme. Henry, his widow, has had sufficient confidence in this view to bring a libel suit against Picquart for defaming her dead husband's honorable memory. And she has been pensioned handsomely by a popular subscription. The next day he committed suicide — probably. They had had the "imprudence" (?) to supply him with a razor. The chief of the general staff resigned. Cavaignac, who had affirmed the

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conclusiveness of the forgery in the Chamber of Deputies, followed him. He remained convinced of Dreyfus's guilt, and resigned because he declined to take part in revision proceedings directed toward disproof of that guilt. Sept. 19, 1898, the Cabinet, against the vote of General Zurlinden, Cavaignac's successor in the Ministry of War, determined upon revision. The army was still convinced of the guilt of Dreyfus.

REVISION.

I have before pointed out revision as the end to attain which the friends of Dreyfus were straining every nerve. I have shown that the third ground of revision was sought for without success in the denunciation of Esterhazy. The fourth ground, new facts material to the issue, is necessarily, as I have also pointed out, too broad to be safely left in the hands of the private persons interested, and is properly placed in the control of the Minister of Justice. As I understand it, the American legal institution which can best be used for comparison with this power of the Minister of Justice is the power of a State Attorney-General over charitable corporations. When a private person wishes to stop an abuse in a charity, he may not do it by bringing suit himself. He must first get the Attorney-General's permission to use that officer's name. If that were not so, charities would be too often annoyed by people who were convinced — as reformers generally are — that things ought to be run differently. So in the parallel French case there are people enthusiastic enough over the innocence of Dreyfus to start revision proceedings every

REVISION

time they get a bit of good new evidence on their side. But the Attorney-General in the American case, and the Minister of Justice in the French case, stand as buffers between this kind of thing and the courts. And I apprehend that their function is not merely a technical one. Certainly, it is not here; and I hope it is not in France. If, with us, a reformer were to prove to his heart's content that a charity fund, intended for the benefit of Tweedledums, was being used for Tweedledees, the Attorney-General would go farther and consider the practical results, and refuse his permission if the suit seemed to him to have a really worthless result in view. So, if the Minister of Justice in France held in his hands satisfactory proof that Dreyfus had communicated to the enemy secret documents other than the bordereau, and if that proof, for satisfactory political reasons, had to be kept secret, I do not understand that he would be wrong in saying: "This is a quasi-political function which I am called on to exercise. I know enough to feel sure that revision would not free an innocent man, and I decline to authorize it." Cavaignac's opinion against revision was, therefore, a proper one from his point of view of the facts.

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Zurlinden's vote had a like justification. But, on the other hand, enough had surely happened to make the responsibility of thus acting on the premise of the guilt of Dreyfus a grave one. One does not wonder that the government felt that the excited people on both sides of the case would have a confidence in the Court of Cassation akin to that which we here have in our Supreme Court, and decided to relieve the tension by authorizing revision.

The preliminary stage of the revision trial was swiftly commenced and finished. Two things were alleged by the government reporter as new facts within the meaning of the law: 1. The Henry forgery; 2. The expert handwriting evidence in the Esterhazy case. The first of these is subject to the logical criticism that, if the evidence at the original Dreyfus trial was convincing, a forgery two years later does not affect the proofs. But to this criticism the answer was made in argument, and it seems a fair one, that the need of such a forgery from the point of view of the forger stationed in the Secret Service Bureau implied that the prior evidence was not sufficient by itself. The moral suspicion is a new fact of serious value.

REVISION

The second new fact seems to an outsider free from criticism, and the kind of thing which the revision law contemplates. A, B, and C testify that they know the bordereau, because it is the handwriting of Dreyfus. D, E, and F, equally skilled, testify three years later that it is the handwriting of Esterhazy, forged by Dreyfus. If the latter be a fact, it is a new one and has important bearing to prove that the first trial was unfair. But, technically, if the Court wants to dodge, it may perhaps do so on two grounds. It may say that such expert testimony is matter of opinion and not of fact, and it may say that the new fact is that Dreyfus forged Esterhazy's handwriting and that that disproves his innocence.

Two additional new facts were urged by counsel for Madame Alfred Dreyfus, who, as representative of her husband, was here properly allowed to appear as "civil party," but who had probably no right to broaden the issue by adding new grounds like these. These were: 1. The disclosure of the fact that secret documents were communicated to the Dreyfus court-martial behind the backs of the accused and of his counsel; 2. The irregularities in the Esterhazy court-martial,

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which had so falsified its results as to block that attempt at revision. The vice of the first I have stated in speaking before this of the legal situation. It does not tend to prove innocence, but only mis-trial. The second does not seem, as a new fact, to have much logical effect on the guilt of Dreyfus.

The court heard full arguments for three days. Practically, it heard only the Dreyfus side; for the French theory, that when the government goes into a case it ought to go as a partisan, worked here for Dreyfus as it had worked elsewhere against him. The report is distinctly a Dreyfus document. The argument of the government representative is of the same character, and the only other person heard was Dreyfus's own counsel.

The judgment of the court was that the case made by the report and argument would be, if fully sustained, a proper case for revision, but that the documents produced did not put the court in a position to render final judgment, and that it would proceed to a supplementary investigation. This it did, in secret, getting at all the sources of information denied in the other trials, and going fully, fairly, and systematically, so far as one

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may judge from what we know, into all the questions properly before it. But it seems to have treated the communication of secret documents as not before it.

I have hitherto, for convenience of language, spoken of the Court of Cassation as one court. It is really three in one, there being three divisions, or sections, of fifteen members each, and one of these sections having exclusive charge of the criminal business. It was this section which heard the Dreyfus case up to and through the first taking of the evidence. In the middle of its work M. Quesnay de Beaurepaire, president of one of the civil sections, resigned, theatrically accompanying his resignation with violent charges against the integrity of the judges of the criminal section. Some of these charges were absurd on their face: others were not, although they did not prove much against the integrity of the criminal section. On the strength of these charges, against the report and protest of the committee appointed to investigate them, a law was passed transferring the Dreyfus case to the three sections sitting together,—to the vote of forty-five judges instead of fifteen. This body is using the old evidence, hearing new, and hearing

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some of the old witnesses over again. At the time of writing we have no news of what the court will do. The characteristic leakage has, however, commenced again; and the *Figaro* is publishing the secret evidence of the Court of Cassation, or part of it. The public curiosity is being fed on this and on fresh confessions and disclosures from the now discredited Esterhazy, while France waits the verdict of the Court of Cassation. It is fairly established that Esterhazy wrote the bordereau. There is an honest difference of opinion on the question whether Dreyfus is guilty of some other treason. There seems, however, to be no conclusive secret proof of it. Every one hopes that there will be no dodging by the Court this time, no decision on technical grounds which will leave the old issue aflame. The Dreyfus party hope for a vindication. Most probably, and this is only a conjecture, the Court will take the middle course. It may deny revision at the one extreme or proclaim the innocence of Dreyfus and even give him compensation at the other. The middle course—I think the safe middle course—would be to send him to a new trial. If the government will have the tem-

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per and patience to give him a fair trial, then the French nation will be able to say, whatever the verdict, that it has laws which Anglo-Saxon nations lack, and by means of which it has put to a final and judicial test and a just result an affair which has called forth the strongest of partisan feeling. If that does not happen, we outsiders may be able to say that no paper provisions for justice can be compared with a worse system, where the men who work it have the patience and the temperaments to make it reach a just result.

THE MORAL.

I think the moral of the Dreyfus case is a deep one, and is, on the whole, creditable to the French nation, because it marks a distinct step in advance. But one must look at the case from the point of view from which the French regard courts and justice.

In Anglo-Saxon law it is a well-recognized principle that the right of an individual to justice (and incidentally to a fair trial) is superior to all considerations of State policy. English and American courts, independent of written constitutions, have asserted the right to control the acts of the government when they infringe on the rights of the individual, and to decide whether and when they do infringe. By the French law, by all continental law, that right is denied. Whether an official has wronged an individual is a question for the official or his superior official to decide. If the superior sustains his own men, the individual is helpless. And I venture with some confidence, following this analogy, the hypothesis that in France the question of whether an individual shall have a fair trial or not has not hitherto

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been one of the rights of the individual, but of the State expediency in the particular case. We have, supporting this, the decision of the Court of Cassation previously cited about secret sessions: "The question of secret sessions is not to be subordinated to any interest of the accused. It is to be subordinate solely to higher interests. It may even be ordered without consulting the accused." What better evidence of the subordination of the individual to the State can be asked for than such a decision of the highest court in France? The nation has chosen this form of government. It is armed to the teeth, and fears all its neighbors except poor Spain. And the government of such a people has hitherto been sustained by its constituents in saying:—

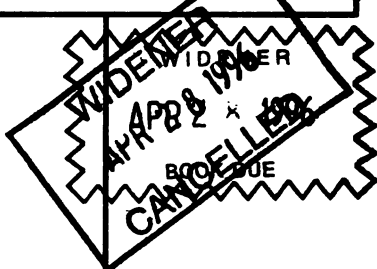
"Whether Dreyfus is guilty or not is of incomparably less importance than the question whether all our systems of espionage and all our military secrets involved in the case shall be dragged out into a glaring light which will destroy their efficiency. We know that Dreyfus is guilty. The nation asks of us an army, and revenge. It must not peril all that it seeks by asking Why? and Wherefore? and When? and

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How? and Who? when grave reasons of State make the answers inconvenient."

From this point of view — perhaps with a little more consistency and with State secrets a little better kept — the anti-Dreyfus campaign must appear much more favorably to a Frenchman than it does to us. And, on the other side, if my hypothesis has value, the agitation in favor of Dreyfus has a much deeper meaning than the mere hope of innocence. It means the dawn of the opinion in the minds of a considerable body of Frenchmen that it is better to secure the individual a fair trial than it is to protect the State administration at the expense of injustice. If the Dreyfus case means, then, that "reasons of State policy" are to follow *lettres de cachet* into the oblivion of a bad past, France is showing an improvement in her ideas of freedom and of justice,—an improvement cheap at twice the cost of the present agitation.

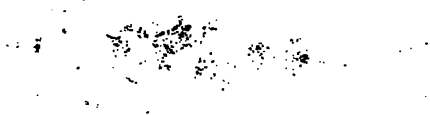
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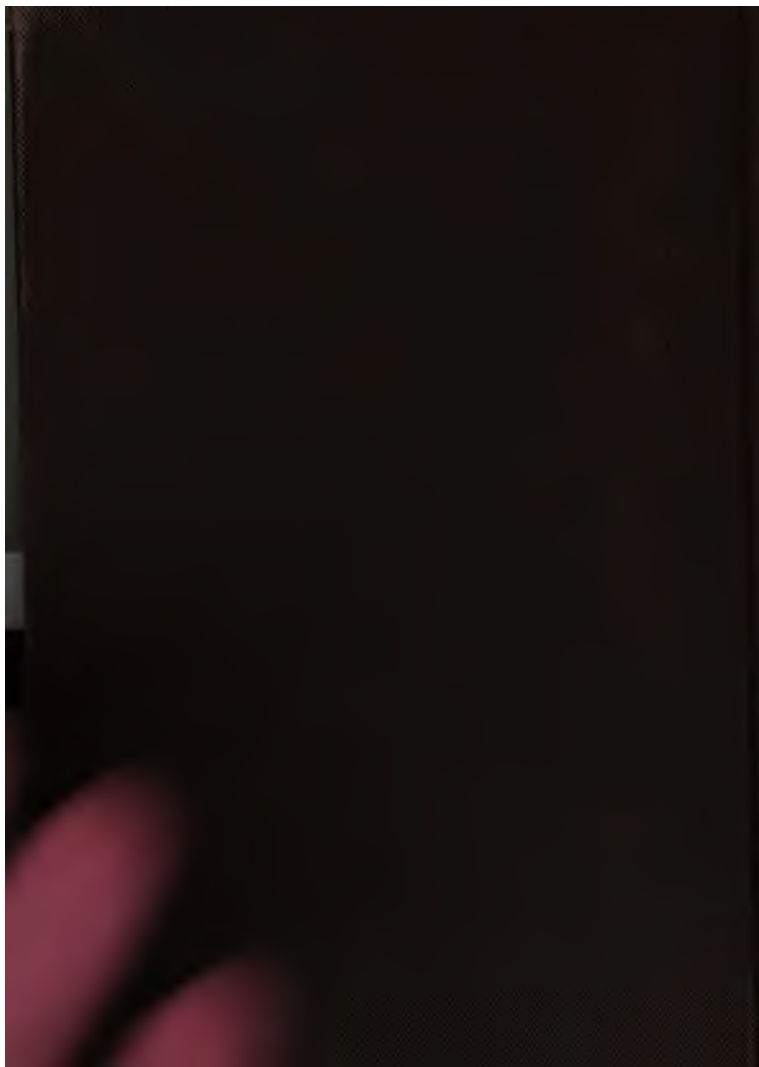


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